IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24626 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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ASHWIN @ SANJU @ PRAGESH SURESHKUMAR YADAV - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

THROUGH JAIL for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 10/01/2006

ORAL JUDGMENT

1.Ashwin @ Sanju @ Pragesh Sureshkumar Yadav, petitioner under Article 226 of the Constitution of India has filed this petition of habeas corpus with a prayer that this Court may be pleased to quash and set aside the

order of detention dated 2/8/2005 passed by the Police Commissioner, Ahmedabad, detaining authority, under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985. The petitioner is in the jail. He has filed application to the Registrar, High Court on 15/12/2005 and therefore, pursuant to the order passed by the Hon'ble the Chief Justice, this matter was placed before this Court on 29/12/2005. On that day, this court has issued Rule which was returnable on 10/1/2006. Therefore, the matter has come up for final hearing in this Court.

2. Ms.Banna Dutta, learned advocate appears for the petitioner. The learned advocate for the petitioner submitted that in this case, detention order has been passed on 2/8/2005. Order of committal has been passed on 2/8/2005 and he has been sent to Bhavnagar jail on the same day i.e. on 2/8/2005. The learned counsel for the petitioner has stated that the authority has supplied grounds of detention on 2/8/2005. The learned counsel for the petitioner stated that the said grounds revels that petitioner has committed four offences which are as under:

1. Offence registered at Maninagar Police Station in

connection with CR No.194 of 2005 dated 2/5/2005 under Section 379 and 114 of IPC. It is alleged that petitioner has committed damage to Hero Honda Splender Motor Cycle valued at Rs.20,000/-.

2. Offence registered at Navrangpura Police Station in connection with CR No.430 of 2005 dated 31/5/2005 under Section 379 and 114 of IPC. It is alleged that petitioner has committed damage to Honda Eterno Scooter valued at Rs.36,254/- and had committed theft of Rs.1,500/-.

3. Offence registered at Maninagar Police Station in connection with CR No.268 of 2005 dated 24/6/2005 under Section 379 and 114 of IPC. It is alleged that petitioner has committed damage to Hero Honda Splender Motor Cycle valued at Rs.21,000/-.

4. Offence registered at Sabarmati Police Station in connection with CR No.306 of 2005 dated 23/7/2005 under Section 379 and 114 of IPC. It is alleged that petitioner has committed damage to Kinetic Honda valued at Rs.10,000/-.

3.It was also alleged that authority has committed

punchnama and also recorded statement of witness at Amraiwadi and it was also alleged that petitioner is 'dangerous person' under the provisions of PASA Act and carrying on anti social activities in this behalf. It was also alleged that he has kept dangerous weapons with him.

4.The learned counsel for the petitioner has submitted that order of detention is bad on the grounds that there may be only disturbance of law and order and not public order in this behalf. For which he has relied upon the judgment in the case of Piyush Kantilal Mehta v. Commissioner of Police, reported in AIR 1989 SC 491, Division Bench judgment of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J) in Letters Patent Appeal No.223 of 2000 in Special Civil Application No.554 of 2000 in the case of Ashok Balabhai Makwana decided on 22/8/2000 and another judgment of this Court (Coram: C.K.Thakkar, Acting C.J. and K.M.Mehta, J.), reported in 2000 (1) GLR 816 in the case of Ashokbhai Jivrajbhai v. Police Commissioner.

5.The On behalf of the respondents, Mr.L.R.Pujari, learned APP appears. He has relied upon order of

detention as well as grounds of detention in this behalf. He has not filed any affidavit in this behalf.

6. Having heard the learned counsel for both the parties, in my considered view, the detaining authority has passed the order of detention without there being any credible and cogent material in this behalf. Contentions of the petitioner are squarely covered by the decisions of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and Division bench Judgment of this Court (Coram: M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. no.554 of 2000 in case of Ashok Balabhai Makwana and another judgment of this Court (Coram: C.K.Thakkar, Acting C.J. and K.M.Mehta, J.) in the case of Ashokbhai Jivrajbhai (supra). And therefore, the order of detention is required to be quashed and set aside.

7. Having heard the rival submissions of the parties and perused the records of the case, I am of the view that only registration of criminal cases alone cannot be said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the detenu are prejudicial to the public order. The power to detain a person under the PASA Act

is not based on simple facts about registration of crimes or the activities of theft of the detenu. There has to be nexus and link for such activities with disturbance of the public order. The activities of the detenu must in the backdrop of the facts, reflect that such activities disturbed the even tempo or normal life of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality. On careful perusal of the grounds of detention order and relying upon the judgment and order dated 22/8/2000 of the Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. No.554 of 2000, judgment of Supreme Court in Piyush Kantilal Mehta (supra) and Special Civil Application No.20420 of 2005 decided by this Court (Coram:K.M.Mehta, J.) on 15/11/2005, the order of detention passed by the detaining authority cannot be sustained and is required to be quashed and set aside.

8. I have considered the facts and circumstances of the case in view of the submissions made by the learned counsel for the petitioner, judgment of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and judgment in Letters Patent Appeal (supra) and other

judgment cited by the petitioner. Considering all these, I am of the view that the activities of the petitioner may affect law and order situation and not affect the public order and therefore, subjective satisfaction arrived at by the authority is not legal and valid. In my view, it cannot be said that the activities of the detenu are prejudicial to the public order. Therefore, the order of detention passed by the authority is required to be quashed and set aside.

9. In the result, I am of the view that the order of detention cannot be sustained by law. I hereby quash and set aside the order of detention. Petition is allowed. Ashwin @ Sanju @ Peagesh Sureshkumar Yadav, detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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